IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2007

CORAM

THE HONOURABLE MR. JUSTICE S.PALANIVELU

Criminal Appeal Nos.858 to 864 of 2007

A.V.Rajeswari .. Appellant/Complainant in Crl.A.No.858/2007

A.S.C.Venku Sha, 47
Proprietor Thirukumaran Silks
34,Sheikpet Saliar ST
S/o.A.S.Chandra Sha
Kancheepuram,
rep. By Power Agent N.Mohan ..Appellant/Complainant in Crl.A.Nos.859, 862, and 863/2007

Thirukumaran Silks
rep. By its Proprietor
A.S.C.Venku Sha, 47
S/o.A.S.Chandra Sha
34,Sheikpet Salia St
Kancheepuram,
rep. By Power Agent N.Mohan ..Appellant/Complainant in Crl.A.No.860, 861 and 864/2007

Vs.

1.M/s.Santha Sarees
Rep. By its P.A.Holder
A.B.M.Raja Sah, 53
S/o.A.B.Munusamy Sha
401, Gandhi Road
Kancheepuram.

2.Tmt.R.Santha Bai .. Respondents/Accused in Crl.A.No.858 and 859/2007

3.Sridhar Fashions
rep. By its Proprietor
A.B.M.Raja Sha, 53
S/o.A.B.Munusamy Sha
401, Gandhi Road, Kancheepuram ..Respondent/Accused in Crl.A.No.860, 861, 862 and 863/2007

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4.Sridhar Designs
rep. By its Power Agent Holder
A.B.M.Raja Sha, 53,401, Gandhi Road
Kancheepuram. ..Respondent/Accused in Crl.A.864/2007

Criminal appeals filed under Section 378 Cr.P.C., to set aside the orders dated 5.9.2007 passed in C.C.Nos.302/2002, 303/2002, 304/2002, 305/2002, 306/2002, 307/2002 and 308 of 2002 on the file of learned Judicial Magistrate No.I, Kancheepuram and allow the above appeals.

For appellants : Mr.V.Sairam

J U D G M E N T

The appellants are the complainants before the learned learned Judicial Magistrate No.I, Kancheepuram in C.C.Nos.302/2002, 303/2002, 304/2002, 305/2002, 306/2002, 307/2002 and 308 of 2002. They lodged a private complaint on the strength of dishonoured cheque against the respondents under Section 138 of Negotiable Instruments Act.

2. The learned Judicial Magistrate No.I, Kancheepuram dismissed the complaints, acquitting the accused under Section 256 Cr.P.C., for the non-appearance of the complainants. It is also stated in the order that on the previous hearings also, the complainants had not appeared before the court for complainants' evidence and since the matter had been pending since 2002, the same were dismissed. Hence, the appellants are before this Court.

3. Learned counsel for the appellants strenuously contended that merely because of the non-appearance of the complainants before the Court concerned, at the time of hearing, the Presiding Officer/Magistrate could not pass an order acquitting the accused after dismissal of the complaints. According to the learned counsel for the appellants, the learned Magistrate should have adopted a proper procedure in this matter and the non observance of such procedure would tantamount to not rendering proper justice to the parties.

4. In support of his contention, he relied on the decision of this court reported in 2003 1 L.W.(Crl) 273 (S.Ravichandran Vs. V.Pandiyan) wherein, this court has observed as follows:-

> "The trial Court is cautioned against the order of dismissal of the complaint in the absence of the complainant and hereafter shall take sufficient care and caution prior to passing such orders, without any ground for passing such order under the provision of which the same has been passed or without assigning valid or tangible reasons in support of the order passed and that

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the parameters of the dictum of law as held by Apex Court in its judgment rendered in Associated Cement Co.Limited Vs. Keshvanand (AIR 1998 Supreme Court 596) should be scrupulously followed by the courts. "

5. In the above said decision, this Court followed the principles formulated by the Apex Court in Associated Cement Co.Limited Vs. Keshvanand (AIR 1998 Supreme Court 596) wherein, the Apex Court has held as follows:-

"Two constraints are imposed on the Court for exercising the power under S.256. First is, if the Court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

6. The above said decision would through much light on the subject. The proper course to be adopted by the learned Judicial Magistrate No.I, Kancheepuram is that when the complaints are taken up for hearing, if the complainants are not present before the Court, it is incumbent upon the Presiding Officer to issue notice to the complainants and without issuance of such notice, adopting the procedure of dismissing the complaints under Section 256(1) Cr.P.C., is not at all appreciable.

7. In view of the above said decisions, this Court is of the opinion that the learned Magistrate should have adjourned the case to some other date to enable the complainants to be present before the Court and in the meanwhile, necessary notice should have been sent to the complainants. In these circumstances, this Court finds that legal grounds are available for allowing this appeal.

8. Considering the circumstances of the case, this Court is of the view that there is no necessity to issue notice to the respondents since it is a matter between the Court and the appellants.

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9. In fine, these appeals are allowed and the learned Judicial Magistrate No.I, Kancheepuram is directed to follow the guidelines issued in the decisions cited supra.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nvsri

To

The Judicial Magistrate No.I, Kancheepuram

+1cc to Mr.V.Sairam, Advocate Sr 58650

VRK(CO)
km/10.10.

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